

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Applicant:	§	
Oleg B. Rashkovskiy et al.	§	Art Unit: 2424
	§	
Serial No.: 10/848,931	§	Examiner: Michael P. Van Handel
	§	
Filed: May 19, 2004	§	Conf. No.: 5716
	§	
For: Providing Content	§	Atty Docket: BKA.0002C1US
Interruptions	§	
	§	

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APPEAL BRIEF

Date of Deposit: July 13, 2009

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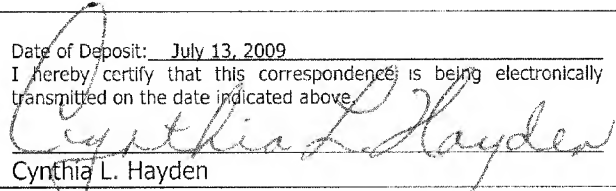

Cynthia L. Hayden

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REAL PARTY IN INTEREST

The real party in interest is the assignee BlackArrow, Inc.

RELATED APPEALS AND INTERFERENCES

None.

STATUS OF CLAIMS

Claims 1-4 (Rejected).

Claim 5 (Canceled).

Claims 6-19 (Rejected).

Claims 20-30 (Canceled).

Claims 31-47 (Rejected).

Claims 1-4, 6-19, and 31-47 are rejected and are the subject of this Appeal Brief.

STATUS OF AMENDMENTS

All amendments have been entered.

SUMMARY OF CLAIMED SUBJECT MATTER

In the following discussion, the independent claims are read on one of many possible embodiments without limiting the claims:

1. A method comprising:
receiving content and an advertisement (Fig. 1, 16) (Specification at page 2, line 25 through page 3, line 8);
storing said content, including an interruptible content portion, and an advertisement in a cache (Fig. 1, 20) coupled to said receiver (Specification at page 3, line 24 through page 4, line 4);
analyzing the content to identify a location to insert the advertisement within the content and, based on said analysis, finding a place to insert said advertisement in said portion while said portion is still stored in said cache (Specification at page 7, line 4 through page 8, line 4);
inserting said advertisement in said portion (Specification at page 7, line 4 through page 8, line 4); and
outputting for display said portion with said inserted advertisement (Specification at page 9, lines 21-23).

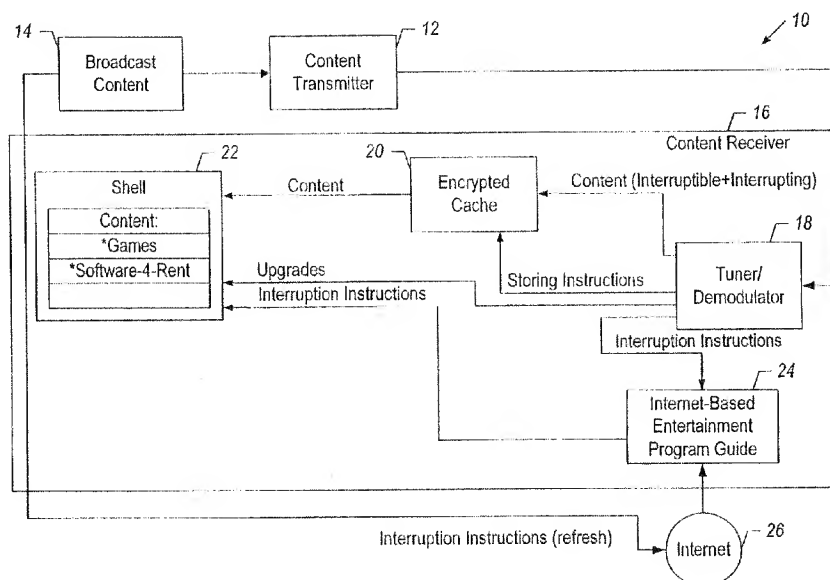


FIG. 1

11. A medium for storing instructions that, if executed, enable a processor-based system to:

- receive content and an advertisement (Fig. 1, 16) (Specification at page 2, line 25 through page 3, line 8);
- store said content, including an interruptible content portion, and advertisement in a cache (Fig. 1, 20) coupled to said receiver (Specification at page 3, line 24 through page 4, line 4);
- analyze the content to identify a location to insert said advertisement within the content and, based on said analysis, find a place to insert the advertisement while said portion is still stored in said cache (Specification at page 7, line 4 through page 8, line 4);
- insert said advertisement in said portion (Specification at page 7, line 4 through page 8, line 4); and
- output for display said portion with said inserted advertisement (Specification at page 9, lines 21-23).

31. A system comprising:

- a receiver to receive content, including an interruptible content portion and an advertisement (Fig. 1, 16) (Specification at page 2, line 25 through page 3, line 19);
- a cache, coupled to said receiver, to store said content and advertisement (Fig. 1, 20) (Specification at page 3, line 24 through page 4, line 4); and
- an interface (Fig. 1, 22) (Specification at page 7, line 4 through page 8, line 4), in said receiver, to analyze the content to identify a location to insert said advertisement within the content and, based on said analysis, find a place to insert the advertisement in said portion while said portion is still stored in said cache, insert said advertisement in said portion and output for display, said portion with an inserted advertisement (Specification at page 9, lines 5-21).

At this point, no issue has been raised that would suggest that the words in the claims have any meaning other than their ordinary meanings. Nothing in this section should be taken as an indication that any claim term has a meaning other than its ordinary meaning.

GROUND OF REJECTION TO BE REVIEWED ON APPEAL

- A. Whether claims 1-3, 6, 7, 10-13, 15, 16, 19, 31, 32, 37, 38, 40, 42, 43, and 46 are anticipated under 35 U.S.C. § 102(e) by Arsenault.
- B. Whether claims 4, 8, 9, 14, 17, 18, 33-36, 39, and 41 are unpatentable under 35 U.S.C. § 103(a) over Arsenault in view of Zigmond.
- C. Whether claims 44, 45, and 47 are unpatentable under 35 U.S.C. § 103(a) over Arsenault in view of Armstrong.

ARGUMENT

A. Are claims 1-3, 6, 7, 10-13, 15, 16, 19, 31, 32, 37, 38, 40, 42, 43, and 46 anticipated under 35 U.S.C. § 102(e) by Arsenault?

Claim 1 calls for analyzing received content. It calls for analyzing that received content to identify a location to insert the advertisement. Thus, the analysis must be an analysis of the content and it must be an analysis to identify a location to insert the advertisement within the content. Thus, you would have to review the content to decide where within the content to insert the advertisement.

In the material relied upon in Arsenault (column 18), it is indicated that, based on the intended use of additional material in advertising for playback of cache program 170, the "CPU 74 organizes and retrieves respective data packets from the additional cache memory 92 (shown in Fig. 3) in appropriate order." There is no interruption at all in Arsenault, but, instead, data packets, like packets 170a and 170b, are integral units between which is placed an ad 174a, as shown in Figure 8. Thus, there is no inserting of advertisements within the content, but, instead, the advertisements are inserted between discrete content.

Moreover, there is no analysis of each of the discrete content segments, such as the segment 170a or 170b to determine a location to insert the advertisement. The advertisement is simply played or not played at the end of a discrete segment. For example, as explained in column 18, lines 1-20, a cached program 170 is divided into multiple segments 170a-170c and additional material segments 172a and 172b are interspersed "between them." All that is done is that the CPU organizes and retrieves the data packets from the memory 92 "in appropriate order." This suggests that discrete packets are simply ordered, not that a decision is made to analyze the content to identify a location to insert an advertisement.

In other words, the difference is that the computer decides how to organize the packets as discrete units and then simply provides the advertisements between those reorganized content sections. In contrast, the claimed invention calls for inserting the advertisement in the content and, further, analyzing the content to decide where to put the advertisement in. There is no analysis of the content explained in column 18 of the reference to determine where to insert advertisements. Instead, there is simply some listing that is done of individual packets that are

put in a particular order where the packets include both content and advertising. This does not mean that there was any analysis of the content to identify a location to insert the advertisement.

Instead, it is equally plausible, if not more so, that all that was done is that a set member of content packets are provided so that ads 174a are provided at appropriate times or appropriate intervals, as shown at 164 in Figure 8 or 168 in Figure 8. There is nothing to suggest that any content is analyzed or that advertisements are inserted within the content based on analysis of that content.

As an example, one could analyze the content to determine the best time to break the content with an advertisement. The reference does not do that. All we know is that it takes a series of data packets, concatenates them, and at intervals provides advertisements between them. What is shown in Figure 8 appears to indicate that ads are placed at very regular intervals, suggesting a time based system, not a content analysis system. The time based system could cause the ads to appear at particular times or at particular intervals that are believed to be advantageous. Such a system has nothing to do with analysis of the content to identify locations for inserting the advertisements, but simply depends on extraneous factors, such as time interval or actual time.

As still another option, showing that the reference does not inherently do what is claimed, the order of playback may be predetermined by another entity. Then all the CPU does is provide the segments in the predetermined order. There is no reason to believe that anyone analyzes the content to decide where the advertisement should go within the content. Instead, someone simply provided a sequence and that sequence is followed at the CPU.

Thus, there is no reason to believe that inherently the reference teaches analyzing the content to decide where to insert the advertisement. Instead, there is every reason to expect that this was not done, since nothing of the sort is intimated by the cited reference.

- B. Are claims 4, 8, 9, 14, 17, 18, 33-36, 39, and 41 unpatentable under 35 U.S.C. § 103(a) over Arsenault in view of Zigmond?**

For the reasons set forth above in Section A, the rejection should be reversed.

- C. Are claims 44, 45, and 47 unpatentable under 35 U.S.C. § 103(a) over Arsenault in view of Armstrong?**

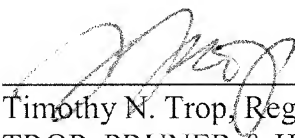
For the reasons set forth above in Section A, the rejection should be reversed.

* * *

Applicant respectfully requests that each of the final rejections be reversed and that the claims subject to this Appeal be allowed to issue.

Respectfully submitted,

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CLAIMS APPENDIX

The claims on appeal are:

1. A method comprising:
receiving content and an advertisement;
storing said content, including an interruptible content portion, and an advertisement in a cache coupled to said receiver;
analyzing the content to identify a location to insert the advertisement within the content and, based on said analysis, finding a place to insert said advertisement in said portion while said portion is still stored in said cache;
inserting said advertisement in said portion; and
outputting for display said portion with said inserted advertisement.
2. The method of claim 1 including receiving said content over a broadband distribution system.
3. The method of claim 2 including receiving television programming.
4. The method of claim 1 wherein inserting the advertisement in said portion includes periodically replacing at least part of said content with the advertisement.
6. The method of claim 1 including receiving digital content and demodulating said content.
7. The method of claim 6 including parsing content and control information.
8. The method claim 7 wherein parsing content from control information includes parsing from said content, instructions for determining when said content may be interrupted.

9. The method of claim 7 including receiving instructions from a back channel for controlling the interruption of said content.

10. The method of claim 1 including receiving encrypted content and controlling the decryption of said content to prevent theft of said content.

11. A medium for storing instructions that, if executed, enable a processor-based system to:

- receive content and an advertisement;
- store said content, including an interruptible content portion, and advertisement in a cache coupled to said receiver;
- analyze the content to identify a location to insert said advertisement within the content and, based on said analysis, find a place to insert the advertisement while said portion is still stored in said cache;
- insert said advertisement in said portion; and
- output for display said portion with said inserted advertisement.

12. The medium of claim 11 further storing instructions that enable a processor-based system to receive said content over a broadband distribution system.

13. The medium of claim 12 further storing instructions that enable a processor-based system to receive television programming.

14. The medium of claim 11 further storing instructions that enable a processor-based system to periodically replace the content with the advertisement.

15. The medium of claim 11 further storing instructions that enable a processor-based system to receive digital content and to demodulate said content.

16. The medium of claim 15 further storing instructions that enable a processor-based system to parse content from control information.

17. The medium of claim 16 further storing instructions that enable a processor-based system to parse from said content, instructions for determining when said first content may be interrupted.

18. The medium of claim 16 further storing instructions that enable a processor-based system to receive instructions from a back channel for controlling the interruption of said content.

19. The medium of claim 11 further storing instructions that enable a processor-based system to receive encrypted content and control the decryption of said content to prevent theft of said content.

31. A system comprising:
a receiver to receive content, including an interruptible content portion and an advertisement;
a cache, coupled to said receiver, to store said content and advertisement; and
an interface, in said receiver, to analyze the content to identify a location to insert said advertisement within the content and, based on said analysis, find a place to insert the advertisement in said portion while said portion is still stored in said cache, insert said advertisement in said portion and output for display, said portion with an inserted advertisement.

32. The system of claim 31 wherein said system is a television receiver.

33. The system of claim 31 coupled to a back channel for receiving instructions about when to replace the content with the advertisement.

34. The system of claim 31 including a device that parses content from instructions for replacing said content with said advertisement.

35. The system of claim 34 wherein said device also parses instructions for how to store said content and said advertisement.

36. The system of claim 31 wherein a shell periodically replaces the content with the advertisement.

37. The system of claim 31 wherein said receiver includes a tuner that tunes to a digital channel and demodulates said content and advertisement.

38. The system of claim 31 wherein said receiver parses said content and said advertisement from control information.

39. The system of claim 38 wherein said receiver parses from said content and said advertisement, instructions for determining when said content may be interrupted.

40. The system of claim 31 wherein said shell controls the decryption of said content to prevent theft of said content.

41. The system of claim 35 including content guide software to receive interruption instructions for interrupting said content and replacing it with said advertisement.

42. The system of claim 31 wherein said shell is coupled to said cache to allow the use of the content received by said receiver, automatically interrupt the use of the content, and temporarily replace the content with the advertisement.

43. The system of claim 31 wherein said cache is an encrypted cache.

44. The method of claim 1 wherein finding includes detecting that a user paused using said content, and retrieving said advertisement from said cache when it is detected that a user paused using said content.

45. The method of claim 44 wherein detecting includes detecting that the user temporarily stopped using the content.

46. The method of claim 1 including displaying content information with said advertisement.

47. The method of claim 1 including inserting said advertisement in response to a pause in the display of said content.

EVIDENCE APPENDIX

None

RELATED PROCEEDINGS APPENDIX

None